

FAIRFIELD RESORTS, INC.,

Plaintiff,

Vs.

FAIRFIELD MOUNTAINS PROPERTY OWNERS ASSOCIATION, INC.,

Defendant.

THIS MATTER is before the court on plaintiff's Motion for Summary Judgment (#68) and defendant's Motion for Partial Summary Judgment (#73). Also before the court is defendant's first Motion for Partial Summary Judgment (#70), which its later filing (#73) corrected. The court will strike the earlier motion (#70) as improvidently filed and deem the later, corrected motion (#73) to be timely filed. Review of the dispositive motions reveals that supporting and opposing briefs have been filed by the respective parties, and that briefs in reply are due to be filed not later than March 26, 2007.

From a preliminary review of these materials, the court will schedule oral arguments for Thursday, May 10, 2007, at 10 a.m., which is being noticed well in advance so that the parties may clear their calendars for that morning. While a report of mediation has been properly filed (#67), the court notes that there is a degree of uncertainty in such report. If there is any life left in mediation, the parties should use best efforts to resolve this case and file a final report well in advance of the hearing.

Finally, respective counsel are advised that if this case survives summary judgment, it will be tried during Judge Thornburg's July 9, 2007, term in Asheville.

ORDER

IT IS, THEREFORE, ORDERED that

- (1) defendant's first Motion for Partial Summary Judgment (#70) is **STRICKEN** as improvidently filed;
- (2) defendant's Motion for Partial Summary Judgment (#73) is **DEEMED** timely filed; and
- (3) plaintiff's Motion for Summary Judgment (#68) and defendant's Motion for Partial Summary Judgment (#73) are **CALENDARED** for oral arguments on May 10, 2007, at 10 a.m. in Asheville, Courtroom No. 2.

Signed: March 22, 2007

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Dennis L. Howell
United States Magistrate Judge

